

## Trafficking in minors

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Trafficking in human beings constitutes a serious violation of human rights and is an offence to the dignity and the integrity of the human being.

Trafficking in minors and young adults is an increasing phenomenon and one that it is difficult to counter; although it is first and foremost a crime to be combated, it also has implications for immigration policy, the right to asylum, freedom of movement, economic and social policies, etc.

Trafficking is becoming a complex phenomenon because it is not solely for the purpose of sexual exploitation; apart from the development of paedophile networks, especially through the Internet; children are exploited as they are forcibly thrown to the labour market or to channels of mendicancy. At the same time, trafficking in children's organs is regularly denounced, as well as the participation of children in violence and armed conflict. Child-bearing is also becoming a commercial activity and children are being produced through more or less voluntary childbirth to supply the illegal adoption market.

Trafficking in human beings is controlled by violent, powerful international criminal networks that use all and more frequently the new technologies to recruit their victims. In comparison to trafficking in drugs or arms, trafficking in human beings represents a low cost in the purchase of "merchandise" and a very low risk. It is considered a high-profit and low-risk crime due to the low arrests, the vulnerability of the victims; the fact that in many countries investigations are still based on the complaint of the victim; the difficulties in

the gathering of evidence and presenting the case before the Court; and, generally, the low response from law enforcement bodies.

**Up to now the main problems related to the prosecution of Child trafficking could be summarised as follows:**

- Child trafficking is often hidden and hard to address because children are often not able to denounce the offenders;
- It not only violates the child's right to grow up in a family environment, but it traumatizes the child for life;
- The inability of the authorities to prevent children trafficked from disappearing and returning to trafficking networks has effectively restricted their freedom of movement since in certain countries they are placed in detention centers;
- It has to be stressed that in many countries there are no specific provisions at national level providing for a separate treatment or special shelters for children victims. In many countries there are no provisions for appointing guardians and no specific assistance and repatriation programs;
- There are no separate shelters for children and in general long-term services for minors or legislative measures focusing on recovery and reintegration of children victims of THB;
- Some countries put an age-limit for the prosecution of THB (usually the sexual majority); and also
- The fact that access to reliable data on the exact number of trafficked persons especially children is not possible due partly to the fact that in many countries a lot of children are simply not registered at birth. All general assessments are hard to verify and vary according to the context and source of information. Governments, international agencies and NGOs provide different kind of data, which is often not comparable. It is also difficult to distinguish between data on trafficking, illegal migration, illegal border crossing, etc. Often,

statistical data collected by the police and the border police is neither gender nor age segregated.

**All that considered, since the late 1980s, the Council of Europe has adopted a variety of initiatives in the field of trafficking in human beings.** The initial activities were awareness-raising and action oriented. The awareness-raising actions made possible the setting-up of a legal framework to fight this phenomenon. In particular, mention should be made of the Recommendation No. R (1991)11 on the sexual exploitation of children; and the Recommendation No. R (2000) 11 of the Committee of Ministers to Member States on action against trafficking in human beings for the purpose of sexual exploitation; Recommendation No. R (2001) 16 on the protection of children against sexual exploitation; Recommendation of the Assembly No. 1526 (2001) 1 on THB of children in Moldova; Recommendation of the Assembly No. 1307 (2002) 1 on the sexual exploitation of children: zero tolerance.

However, the Council of Europe considered that it was necessary to draft a legally binding instrument which goes beyond recommendations or specific actions.

To fight this modern form of slavery, the Council of Europe adopted a comprehensive treaty aimed at the three "Ps": preventing trafficking, protecting the human rights of its victims and prosecuting the traffickers. In addition, the Convention provides for the setting up of an effective and independent monitoring mechanism capable of controlling the implementation of the obligations contained in the Convention.

The *Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197)* was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005 and opened for signature in Warsaw on 16 May 2005 on the occasion of the 3rd Summit of Heads of State and Government of the Council of Europe. On 24 October 2007, the Convention received its tenth ratification thereby triggering the process by which it

entered into force on 1 February 2008 with regard to the first ten countries to ratify it: Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova<sup>1</sup>, Romania and Slovakia. Up to now 17 member States have ratified the Convention (Armenia is the 17<sup>th</sup> State that ratified the Convention on the 14 of April 2008). It will enter into force with regard to Bosnia and Herzegovina, France, Malta and Norway on the 1<sup>st</sup> of May 2008; with regard to Portugal on the 1<sup>st</sup> of June 2008; with regard to Latvia on the 1<sup>st</sup> of July 2008 and with regard to Armenia on the 1<sup>st</sup> of August 2008.

The Convention has also been signed, but not yet ratified by 21 other member states: Andorra, Belgium, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Montenegro, Netherlands, Poland, San Marino, Serbia, Slovenia, Sweden, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom.

Nine member states – Azerbaijan, Czech Republic, Estonia, Liechtenstein, Monaco, Russia, Spain, Switzerland and Turkey - have not yet signed it.

The Convention is not restricted to Council of Europe member states; non-members states and the European Community also have the possibility of becoming Party to the Convention.

It has to be stressed that the CoE Convention is one of the rare international texts that have entered into force and has received so many ratifications in so short time. This is a major achievement and a major step forward to the fight against this modern form of slavery.

### **Scope of the Convention**

The Council of Europe Convention is the first international legally binding instrument which affirms that trafficking in human beings constitutes a violation of human rights and is an offence to the dignity and integrity of the human being. The Convention adopts the definition of trafficking given by the Protocol of Palermo, but has a wider scope: it covers all forms of trafficking: national and transnational, related or not to organised crime. It applies to all

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<sup>1</sup> Moldova was the first member State that ratified the Convention on the 19-05-2006 followed by Romania (21/8/2006 ) and Austria (12/10/2006 ).

victims of trafficking: girls, boys, women and men and to all forms of exploitation: sexual exploitation, forced labour or services, etc.

The *Ad hoc Committee on Action against Trafficking in Human Beings (CAHTEH)* set up by the Council for drafting the Convention has taken seriously into consideration the comments presented by UNICEF during the sessions. The Convention reflects a child-sensitive approach throughout its entire text, with its provisions aiming at the best interest of the child with specific measures to be taken when children are victims of trafficking.

### **Measures provided by the Convention aiming at all victims of THB:**

Concerning **prevention** the Convention focuses mainly on:

- The importance of increasing international, national, regional and local co-operation and co-ordination and strengthening co-ordination between the various bodies responsible for combating trafficking;
- The need to provide awareness-raising, education, information and training programs for potential victims of trafficking and professionals concerned at international, national, regional and local level (involving, where appropriate, NGOs committed to the protection of or assistance to victims) and to raise the awareness of the media and the civil society at large to the problem of trafficking (in countries of origin but also in countries of destination in order to reduce demand);
- The assistance and protection for potential victims of trafficking;
- The need to discourage the demand that fosters all forms of exploitation of persons, especially women and children, leading to trafficking (involving, where appropriate, NGOs committed to the protection of or assistance to victims).

Concerning **protection of victims** the Convention insists on:

- The importance of the identification of victims. Victims of trafficking must be recognised as such in order to avoid police and public

authorities treating them as illegal migrants or criminals. If the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process is over;

- The right for victims to a minimum of 30 days recovery and reflection period in order to escape from the influence of the traffickers and to take a decision regarding their possible cooperation with the authorities. A renewable residence permit may be granted if their personal situation requires so or if they need to stay in order to cooperate in a criminal investigation. However, according to the Convention it is of high importance **to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness (Art.12 para 6)<sup>2</sup>**.
- The assistance for victims of trafficking (involving, where appropriate, NGOs committed to the protection of or assistance to victims), including physical and psychological assistance and support for their reintegration into society. Medical treatment, counselling and information as well as appropriate accommodation are all among the measures provided;
- The possibility for employment for victims of trafficking, in order to prevent, inter alia, their re-victimisation (in particular, through the setting up of programs aimed at the socio-economical integration of victims);
- The compensation for victims of trafficking;
- The protection of security and private life (in particular by the media) and of victims of trafficking throughout the course of judicial proceedings;
- The protection of members of the families of trafficking victims;

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<sup>2</sup> See also the Recommended Principles and Guidelines on Human rights and Human Trafficking issued by the Office of the United Nations High Commissioner on Human Rights (Guideline 6) where it is stressed that assistance to a victim is not made conditional on his or her willingness to act as a witness.

- The possibility of and assistance for repatriation if needed, under safe conditions, of victims of trafficking;
- The possibility of issuing (temporary and/or permanent) residence permits to victims, independently of the willingness to cooperate with the authorities;
- The possibility of social and professional reintegration of trafficking victims;
- The protection in countries of origin and/or countries of destination.

Concerning **prosecution of traffickers** the Convention insists on:

- The criminalisation of trafficking and of other trafficking-related offences, as well as of attempt, aiding or abetting;
- The punishment of the "consumer's" behavior who consciously uses the services of a victim of trafficking;
- The nature of sanctions (imprisonment, seizure and confiscation, closing of establishments used to carry out THB, etc.) and the severity of the penalties to be applied (including the question of recidivism);
- The non-punishment clause for victims of trafficking for offences committed in the framework of the trafficking process meaning that penalties should not be imposed on victims for their involvement in unlawful activities, if they were compelled to do so by their situation;
- The inclusion of the *ex officio* prosecution (additionally to the *ex parte* accusation);
- The protection of the victims of trafficking, witnesses and collaborators with the judicial authorities (e.g. interrogation techniques, special protection for witnesses, protection of the victim's identity during court proceedings, etc);
- The confiscation of assets (in the light of the revision process of Convention ETS 141);
- The inclusion of provisions concerning corporate liability (criminal or other liability);

- The specialization of the authorities and co-ordination of the various bodies concerned;
- The co-operation with and between national authorities, and training;
- The inclusion of provisions establishing jurisdiction over the offences of trafficking.

**Provisions of the Convention containing special measures to be taken when children are victims of trafficking:**

- Special measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them (Article 5).
- Identification and representation of child victims (Article 10).
- Protection of the private life and identity of child victims (Article 11).
- Residence permit for child victims to be issued in accordance with the best interests of the child (article 14).
- Child victims shall not be returned to a State, if there is indication that such return would not be in the best interests of the child (Article 16).
- Repatriation programmes for child victims should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures (Article 16).
- Among the "*Aggravating Circumstances*" to be considered when determining the penalty for the offence, is the case of child victims of trafficking (Article 24).
- Special protection measures are afforded to child victims during and after investigation and prosecution (Article 28).
- During Court proceedings special care should be taken of children's needs and their right to special protection measures ensured (Article 30).

**Monitoring implementation of the Convention**

The entry into force of the Convention triggers the setting up of its monitoring mechanism (Art.36-38) which, in accordance with the Convention, must be in place one year after its entry into force (on November 8-9, 2007, a Conference has been organised by the CoE in Strasbourg on the monitoring

mechanism of the Council of Europe Convention on Action against Trafficking in Human Beings).

The monitoring mechanism consists of two pillars: the *Group of Experts against Trafficking in Human Beings (GRETA)*, a technical body, composed of independent and highly qualified experts, and the *Committee of the Parties*, a more political body, composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe.

GRETA is responsible for monitoring implementation of the Convention by the Parties. GRETA will regularly publish reports evaluating the measures taken by the Parties and those Parties which do not fully respect the measures contained in the Convention will be required to step up their action.

The Committee of the Parties may also, on the basis of GRETA's report and conclusions, make recommendations to a Party concerning the measures to be taken to follow up GRETA's conclusions.

The Convention recognises the important role which civil society, in particular non-governmental organisations, plays in preventing trafficking and protecting and assisting victims, and consequently encourages co-operation between public authorities, non-governmental organisations and members of civil society.

### **Council of Europe Campaign to Combat Trafficking in Human Beings<sup>3</sup>:**

Finally, the entry into force of the Convention also marked the end of the *Council of Europe Campaign to Combat Trafficking in Human Beings*, launched in 2006 under the slogan: "**Human beings – not for sale**". A total of 41 member States participated in one or more of the eleven regional information and awareness raising seminars, which were organised to

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<sup>3</sup> For up to date information on the Council of Europe's activities to combat trafficking in human beings, including the chart of signatures and ratifications of the Convention, please consult our website: [www.coe.int/trafficking](http://www.coe.int/trafficking)

highlight the measures which can be taken to prevent this new form of slavery; to protect the human rights of victims and; to prosecute the traffickers and their accomplices. The seminars were attended on average between 100 and 150 participants, including representatives from governments, national parliaments and non-governmental organisations.

1. Action against Trafficking in Human Beings: Measures to Protect and Promote the Rights of Victims, **London**, 10- 11 December 2007
2. Action against Trafficking in Human Beings: Measures to Protect and Promote the Rights of Victims, **Belgrade**, 18-19 October 2007
3. Action against Trafficking in Human Beings: Criminal and Procedural Measures, **Paris** 27-28 September 2007
4. Action against Trafficking in Human Beings: Measures to Prevent, Protect and Prosecute, **Yerevan**, 5-6 September 2007
5. Action against Trafficking in Human Beings: Measures to Protect and Promote the Rights of Victims, **Berlin**, 19-20 April 2007
6. Action against Trafficking in Human Beings: Prevention, Protection and Prosecution, **Nicosia**, 15-16 February 2007
7. Action against Trafficking in Human Beings: Prevention, Protection and Prosecution, **Athens**, 5-6 December 2006
8. Action against Trafficking in Human Beings: Prevention, Protection and Prosecution, **Oslo**, 1-2 November 2006
9. Action against Trafficking in Human Beings: Prevention, Protection and Prosecution, **Rome**, 19-20 October 2006
10. Action against Trafficking in Human Beings: Prevention, Protection and Prosecution, **Riga**, 21-22 September 2006
11. Action against Trafficking in Human Beings: Prevention, Protection and Prosecution, **Bucharest**, 4-5 April 2006

### **Other seminars and events organised by CoE on THB:**

#### **1. Regional Seminar on Guidelines for a co-ordinated action against trafficking in human beings in South Caucasus, Tbilisi, 22-23 February 2006**

This seminar was a follow-up to the regional seminar held in Tbilisi, in November 2002, on "Co-ordinated action against trafficking in human beings for the purpose of sexual exploitation: towards a regional action plan" (proceedings published). The 2006 seminar aimed to have an overview of the progress made since 2002, and to make some steps towards a co-ordinated action against trafficking in human beings in South Caucasus.

#### **2. Seminar on non-legislative measures for preventing trafficking in human beings and strengthening the protection of victims in Montenegro, Igalo, 26-28 April 2006**

This seminar was a follow-up to the 2003 Report of the Council of Europe and OSCE Independent Experts on the "Case of the Moldovian woman". It was organised in co-operation with the National Co-ordinator for the Fight Against Trafficking in Human Beings.

**3. Seminar on the Promotion of the signature and ratification by the Russian Federation of the Council of Europe Convention on Action against Trafficking in Human Beings, Moscow, 15-16 November 2006**

This seminar was a follow-up to the seminar held in Moscow in December 2004, on "Action against trafficking in human beings in the Russian Federation: towards an action plan". Proceedings have been published in English and Russian. The aims of the seminar were to raise awareness and inform the Federal authorities of the main provisions of the Council of Europe Convention on Action against Trafficking in Human Beings, in view of its signature and further ratification by the Russian Federation.

**4. Girl Child Victims of Trafficking, United Nations Headquarters, New York, 1 March 2007**

The Equality Division of the Council of Europe and the Permanent Mission of the Republic of San Marino to the United Nations, on behalf of the San Marino Chairmanship of the Committee of Ministers of Council of Europe, jointly organised a side-event on "Girl Child Victims of Trafficking" which took place on 1 March 2007 on the occasion of the 51st Session of the Commission on the Status of Women (CSW) (New York, 26 February – 9 March 2007).

The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) contains specific measures to reduce children's vulnerability to trafficking and special measures to protect child victims of trafficking. The side-event was devoted to these measures.

**5. Seminar on the Misuse of the Internet for the recruitment of victims of trafficking in human beings, Strasbourg, 7-8 June 2007**

The Council of Europe has prepared a study on the misuse of internet for the recruitment of victims of trafficking in human beings. In order to contribute to the preparation of this study, the seminar held in Strasbourg on 7 and 8 June 2007 discussed the different methods used for the recruitment of victims on the internet and possible legislative, administrative and technical measures to combat this misuse.

**6. Action against trafficking in human beings in Montenegro: protection of victims and prosecution of traffickers, Kolasin, 5-6 July 2007**

A seminar on "Action against trafficking in human beings in Montenegro: protection of victims and prosecution of traffickers" was held in Kolasin on 5-6 July 2007. It was organised by the Gender Equality and Anti-Trafficking Division of the Directorate General of Human Rights and Legal Affairs, in co-operation with the National Co-ordinator for combating trafficking in human beings. This seminar was a follow-up to the seminar organised in April 2006 by the same partners on "Non-legislative measures to prevent trafficking in human beings and strengthen the protection of victims". It focused on the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings dealing with the protection of victims and prosecution, and aimed, inter alia, to assist the public authorities of Montenegro in their preparations for the ratification of the Convention.

**7. Conference on the monitoring mechanism of the Council of Europe Convention on Action against Trafficking in Human Beings, Strasbourg, 8-9 November 2007**

In preparation for the entry into force of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No 197), the Council of Europe member states, observer states, international governmental organisations and non-governmental organisations were invited to participate in this conference to

contribute to the setting up of the monitoring mechanism of the Convention (GRETA and Committee of the Parties).

### **Conclusion:**

Combating effectively trafficking, especially of children, demands a combination and coordination of multisectorial action from all institutions involved (national, international, governmental, and non-governmental institutions) in order for cases to be assessed and judged in a rapid and efficient way. It needs a steady collaboration of all States simultaneously at 3 levels: prevention, protection, prosecution.

But first of all there must be sufficient trained of all officers implicated in this field, in order to be able to identify such cases and ready to fight trafficking in human beings and to protect efficiently victims.

Fight against trafficking in human beings, due to dangers related to it and inter connection of those activities with all forms of corruption, cannot be efficient without education of police officers, judges, public prosecutors, border control and other supervisory agents, not acquainted with the risks, methods and tactics necessary to discover, prosecute and prevent trafficking and also smuggling in persons.

However, we should not forget that first of all and above all trafficking in human beings is a **crime of indifference**. This means that the first question asked should not be: "*how do I know* that this person is a victim", but "*what do I care to know*".

What do I care to know if a person is forced to offer sexual services since I pay to buy such services?

What do I care to know if the object I just bought is made by slaves since I bought it cheap?

What do I care to know if the human organs used to save my life or the life of one of my beloved have been removed by force from a child, since the life I care for is not at risk anymore?

What do I care to know, if in order to satisfy my maternal instinct I am willing to buy a child, justifying my action by believing that I save it from hunger?

If the satisfaction of one of our needs is stronger than the respect of life and dignity of a human being, then, we certainly have a share of responsibility.

As long as we stay inactive before such crimes we all have a part of responsibility and beyond the adoption of any legislative texts at national or international level against THB, we should wonder if we do not contribute to this phenomenon by our position.-